

**REMARKS**

The previous rejections are repeated and made final. The previous remarks of applicant are incorporated herein. The examiner's new comments concerning the rejections that are made final are addressed as follows.

Respecting the Jacobsen rejection of claims 1, 2 and 8, the examiner applies an interpretation to the claims that was not intended. Claim 1 along with claims 54 and 65 are amended to make clear that the diverters are unitary. This is consistent with the claims as originally written because the claims specify "a preformed unibody diverter", and the examiner has interpreted that broader than had been anticipated by applicant. Entry is appropriate as the claims are consistent with the intended meaning and the previous arguments presented by applicant.

Regarding the rejections based upon Syx and Mayle, the examiner argues that a building foundation is not claimed. However, the previous arguments should be reconsidered because the previous arguments are sufficient to distinguish over these references despite the fact that the claims are not directed to a combination including a building foundation. The point previously made in Amendment A is that the vegetation barrier of Syx and the Mayle device are not suitable for use for the building foundation because their structure differs from the structure that is claimed. This is discussed on pages 13 and 14 of Amendment A. It was not argued that a building foundation was claimed, rather that the diverters that are claimed are suitable for use with such a building foundation while the art does not meet or suggest the structure in the present claims and is therefore not suitable for use with a building foundation.

For these reasons and the reasons previously states, applicant requests reconsideration and allowance of the instant application. Should the examiner believe that a telephone conference would aid in the prosecution of the application, the examiner is invited to contact the undersigned attorney at the below-listed number.

Respectfully submitted,

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By

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